

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA

Seventh Meeting of the Conference of the Parties

Lausanne (Switzerland), 9 to 20 October 1989

Interpretation and Implementation of the Convention

RETURN OF LIVE ANIMALS OF APPENDIX II OR III SPECIES

This document and draft resolution attached as an Annexe have been prepared and are submitted by Denmark.

1. Introduction

11. There may be some interest in being able to return live specimens of animals to the state of export, when the specimens are not accompanied by the necessary export permits.

On the one hand they may be released in nature, on the other, it may be difficult to find room for the specimens. Finally, an immediate return of live specimens of animals may entail administrative and other advantages, cf. below.

It should, however, be underlined that in several cases the question of returning live animals does not occur, because it is in the interest of the importing country to keep it for breeding purposes in zoos, etc.

12. One of the problems of return is that transport costs are incurred. These may be covered by:

- a) the authorities of the importing country;
- b) the importer;
- c) the authorities of the exporting country;
- d) the exporter; or
- e) the airline or shipping company.

It cannot normally be expected that the authorities of the exporting country will be willing to pay for the return, especially in cases where the violation is of a strictly administrative nature. This would apply in particular to imports of Appendix II or III specimens where the only fault is the lack of an export permit at the time of import or an incomplete document, e.g. because the actual number of

specimens exceeds the number stated on the export permit or the shipment contains Appendix II or III specimens which are not covered by this document.

If the importing country decides not to allow the import of such specimens and is not willing to pay for their return to the exporting country, there are, therefore, only the following possibilities:

- Return at the expense of the importer in case the shipment is confiscated in full or in part (or if legally possible without a prior confiscation). The importer will, however, rarely acknowledge having ordered the specimens concerned.
 - Return at the expense of the airline or shipping company and thus perhaps eventually at the expense of the exporter. This is only possible when the importer refuses acceptance of the shipment and rejects the entire shipment*, which therefore has to be returned.
13. The specimens are not always in such a condition that they can be returned immediately without damage to their health. It is, therefore, important to establish that, regardless of the importer's possible right to reject a shipment which is not in accordance with his order, the authorities of the importing country are entitled to seize an illegal shipment if the specimens cannot be returned without damage to their health. This is to be considered as being in conformity with the Convention's basic principles.
 14. If the authorities seize the specimens in order to recondition them, they cannot be returned immediately regardless of the importer's refusal to accept the shipment. The specimens are considered to have been accepted, and it may therefore be difficult to claim the transporter's - and thus the exporter's - liability for return in accordance with the ordinary rules applying to international transport.
 15. If the specimens are returned after seizure and confiscation they must be returned to the authorities of the exporting country. Whether a claim can be made for the expenses incurred by such return to be paid by the "importer" or the original transporter must depend on the rules of law of the importing country.

2. Rules of the Convention

21. Pursuant to Article VIII 1.(b) it is possible to return or seize and later confiscate (and then return) specimens which are not accompanied by the correct export permits. Specimens which are returned thus need not necessarily have been confiscated.
22. Pursuant to Article VIII 4.(b) specimens shall be returned to the exporting country after consultation with the authorities of that country, or they shall be placed in care.

* The importer will often be in a situation where - if he accepts the shipment - it, or at least those parts of it which are illegal, will be seized by the authorities and confiscated. It will, therefore, sometimes be more advantageous to the importer to reject the entire shipment.

23. Article VIII only concerns confiscated specimens, cf. Article VIII, paragraph 1., to the effect that specimens which are returned without having been confiscated must not necessarily be returned to the authorities of the exporting country but may for example be returned to the exporter.

3. Principles

31. It is important to establish the principle that the Convention does not exclude a return to the exporter as such an approach may entail several advantages:
- a) It is an administratively easy way to respond in the event of violations which are of a strictly formal nature. Seizure, confiscation and legal procedures are avoided.
 - b) The method is cheap for the authorities of the exporting as well as the importing country.
 - c) The approach contributes to "teaching" airline companies and other transporters to only accept specimens when the paperwork is in order.
 - d) The approach will also "teach" the exporters to bring papers in order. In the last instance the exporter is liable for transport expenses and, unless he pays the costs of returning specimens to the transport company, the exporter cannot expect that company to transport any more shipments for him.
32. At the same time, it is important to establish, however, that the authorities of the importing country are entitled and obliged to seize and confiscate specimens even though they are rejected by the importer. Such a right must exist when the specimens are in no condition to be returned without previous care.
33. Furthermore, it must be emphasized that the question of immediate return to the exporter only arises in cases of a strictly formal violation of rules, i.e.:
- a) in the case of Appendix II and III specimens,
 - b) when it is obvious that proper export document could have been obtained from the authorities of the exporting country, and
 - c) when it is obvious that the authorities of the importing country would have accepted importation if the proper export documents had been available.

On the other hand, it is the general experience that there are many cases of formal violations primarily in the form of export papers which are not in accordance with the shipment.

34. Finally, it must be a consequence of the general co-operation between the authorities in different countries that the authorities of the exporting country be informed, if specimens are returned to the exporter. In this way, the Management Authority of the exporting country has the opportunity to respond to the current violation of the provisions of the Convention. The Authority would furthermore be able to intervene, e.g. if the specimens were not legally in the exporter's possession.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Return of Live Animals of Appendix II or III Species

NOTING that Article VIII, paragraph 1.(b), of the Convention provides that the Parties shall take appropriate measures to enforce the provisions of the Convention including to provide for the confiscation or return to the state of export of specimens traded in violation of the Convention;

NOTING that Article VIII, paragraph 4.(b), allows a Management Authority of an importing country, after consultation with the state of export, to return confiscated specimens to that state at the expense of that state;

NOTING, however, that Article VIII does not preclude that the Management Authority allows the importer to refuse acceptance of a shipment, thus forcing the transporter to carry the shipment back to the exporter;

RECALLING Resolution Conf. 4.10 adopted at the fourth meeting of the Conference of the Parties (Gaborone, 1983) on Transit;

RECALLING Resolution Conf. 4.17 adopted at the fourth meeting of the Conference of the Parties (Gaborone, 1983) concerning the Re-export of Confiscated Specimens;

RECALLING Resolution Conf. 6.6 adopted at the sixth meeting of the Conference of the Parties (Ottawa, 1987) on the Retrospective Issuance of Permits and Certificates;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

RECOMMENDS

- a) that live animals of Appendices II and III species arriving in an importing country without a proper export permit be seized and confiscated or - if possible and if appropriate - be sent to the Management Authority of the exporting country or the country of origin;
- b) that the Management Authority of an importing country may accept that such specimens be returned immediately and directly to the exporter (at the expense of the transporter and eventually the exporter) if the importer refuses to acknowledge the shipment;
- c) that the Management Authority of the importing country, however, not adopt this procedure when:
 - 1) the Management Authority considers, that the specimens are in such a condition that they cannot be returned immediately without detriment to their health; or
 - ii) the Management Authority establishes or suspects that a proper export permit could not have been obtained, e.g., because the specimens were acquired in contravention of the laws of the state from where they originate or were exported; or

- iii) the Management Authority for any other reason is not convinced that the specimens were legally in the possession of the exporter; or
 - iv) the Management Authority is not convinced that the specimens will be returned to the exporter in the exporting country but will be redirected to another country; or
 - v) the Management Authority suspects, that the improper export permit is caused by the importer or is due to his negligence; and
- d) that the Management Authority of the importing country inform the Management Authority of the exporting country of any shipment being returned to the exporter.